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sold, and could therefore have sold any of his future crops, under this doctrine. But the court failed to consider the doctrine of potential existence, and turned to bailments for the plaintiff's recovery. To hold that such a contract creates a bailment is a stretching of the law to a breaking point. The court has some authority for its decision, since it quotes the three cases decided on such contracts heretofore. Of these, two are in accord with the principal case (*Gilbert v. Copeland* (1918) 22 Ga. App. 753, 97 S. E. 251; *Stewart v. Sculthorp* (1894) 25 Ont. 544), but of these the latter held the transaction a bailment without discussion, while the former seems to be the foundation of the reasoning in the principal case and is subject to the same criticism. In the third case (*Robinson v. Stricklin* (1905) 73 Nebr. 242, 102 N. W. 479) the court reasons its way to a contrary conclusion.

A bailment is a delivery of goods for some purpose on a contract, express or implied, that after the purpose has been fulfilled the goods shall be redelivered to the bailor or otherwise dealt with according to his instructions (*In re Southern Arizona Smelting Co.* (1917) 240 Fed. 47; 6 C. J. 1084). Herein lies the difficulty with the present case. The very goods delivered are destroyed by the processes of germination and plant growth. After the plant sprouts, no chattel on which the bailment can attach exists until the crop comes into being. As in a pledge, chattels not yet in existence cannot be bailed (*Macomber v. Parker* (1833) 14 Pick. (Mass.) 497; *Smithhurst v. Edmunds* (1862) 14 N. J. Eq. 408; *Collins' Appeal* (1883) 107 Pa. 590, 52 Am. Rep. 479). It is true that chattels may be bailed and returned in far different form, as when ores are smelted; both the slag and the metal belong to the bailee (*In re Southern Arizona Smelting Co.*, *supra*); or materials added to the goods bailed attach to and become part of the bailment, as when linings are furnished, and are put in coats made by the bailee (*Borman v. U. S.* (1919) 262 Fed. 26). But in all such cases the article bailed never loses its existence as the seed does here. The common law on bailments does expand to meet modern conditions, but such expansion must certainly be reasonable and not forced as is here attempted.

ESCROW: NECESSITY FOR A CONTRACT BINDING BOTH PARTIES—M gave a binding option for the purchase of 1900 shares of stock and delivered the stock to a bank accompanied by written instructions to deliver it to F at any time within two years thereafter upon payment of \$2000 to the bank by the option holder. Before the option lapses, M became dissatisfied and in order to avoid a sale to F induced C to purchase and secured delivery. F later elected to purchase and then sue C in conversion for the value of the stock. *Held*: that the defendant was a purchaser with notice and liable to the option holder; that since a valid escrow had been created, the escrow holder could pass no title to the stock except to the option holder, particularly when the wrongful delivery is to one who takes with notice. The option holder was therefore allowed recovery. *Feisthamel v. Campbell* (1921) 37 Cal. App. Dec. 27.

Since an option agreement is now considered a binding contract specifically enforceable if for land (*Smith v. Bangham* (1909) 156 Cal. 359, 104 Pac. 689, 28 L. R. A. (N. S.) 522; *Bailey v. Security Trust Co.* (1919) 179 Cal. 540, 147 Pac. 444; *Braserton v. Vokal* (1921) 35 Cal. App. Dec. 691, 200 Pac. 651) this case falls within the doctrine that a valid escrow

must rest upon an enforceable contract between the vendor and purchaser. Although escrows were used in the common law at an early date, such a doctrine was never enunciated by any court until 1866, when it was laid down in California in *Fitch v. Bunch* (30 Cal. 208). Since that case the rule has met with academic criticism, mainly on the basis that it is an unwarranted innovation on the old common law. See Henry Ballantine, "Delivery in Escrow," 29 Yale Law Journal, 826, 830; see also similar articles noted in 5 California Law Review, 420. On the other hand, the courts seem to have adopted the doctrine of *Fitch v. Bunch* as valid both in California and other jurisdictions. *Miller v. Sears* (1891) 91 Cal. 282, 27 Pac. 589, 25 Am. St. Rep. 176; *Holland v. McCarthy* (1916) 173 Cal. 597, 160 Pac. 1069 (discussed in 5 California Law Review, 420); *Anderson v. Messenger* (1907) 158 Fed. 250, 85 C. C. A. 468; *Main v. Pratt* (1916) 276 Ill. 218, 114 N. E. 576; *Foulkes v. Sengstacken* (1917) 83 Ore. 118, 163 Pac. 311; *McLain v. Healy* (1917) 98 Wash. 489, 168 Pac. 1; *Clark v. Campbell* (1901) 23 Utah 569, 65 Pac. 496. In all these cases the reasoning is that an escrow connotes that the depository is the agent of both parties, and that such agency is irrevocable for the time fixed. To bind the grantor, the grantee must give some consideration so that either an executed or executory contract is formed. If this consideration is absent, there is no binding contract and no escrow, and the grantor may take his property at any time. So, too, if the supporting contract is unenforceable because of the Statute of Frauds, there is no escrow. *Cannon v. Handley* (1887) 72 Cal. 133, 13 Pac. 315; see also Ann. Cas. 1912B 1343. The prospective purchaser, however, need not be bound to purchase, if he has paid a consideration to the seller for holding the offer open. Two other California cases support the leading case in holding that an option agreement is sufficient to make a delivery in escrow binding on both parties. *Thomas v. Birch* (1918) 178 Cal. 483, 173 Pac. 1102; *Bailey v. Security Trust Co.* *supra*. However much the doctrine of *Fitch v. Bunch* may be criticized, it is now incorporated in the law of California and must be accepted.

LIBEL: RIGHT TO SUE FOR DEFAMATION OF DECEASED RELATIVE—The defendant published the false statement that the plaintiff's deceased brother was an illegitimate child. Plaintiff sues and defendant demurs. *Held*: that the plaintiff had no cause of action since the libel did not concern her directly. *Saucer v. Groux* (1921) 36 Cal. App. Dec. 538, 202 Pac. 887. A libel of a dead man is criminal in our law (Cal. Penal Code, §§ 248-249), as in other jurisdictions. Such statutes either follow the common-law theory that those libels provoke a breach of the peace by the relatives of the deceased (*Case de Libellis Famosis*, 5 Co. Rep. 125a, 77 Eng. Rep. R. 250; *King v. Topham* (1791) 4 T. R. 126, 100 Eng. Rep. R. 93; *Rex v. Ensor* (1877) 3 T. L. R. 366), or make a libel of the dead absolutely criminal (*Washington v. Haffer* (1916) 94 Wash. 36, 162 Pac. 45, L. R. A. 1917C 610, Ann. Cas. 1917E 229; cf. *Odgers on Libel and Slander* (5th ed.) 23, 456-7). Such libels, however, give no grounds for civil suits, even though the courts use the criminal definition of libel in civil actions (*Bradt v. New Nonpareil Co.* (1899) 108 Iowa 449, 79 N. W. 122, 45 L. R. A. 681; *Fleagle v. Downing* (1918) 183 Iowa 1300, 168 N. W. 157). No action can be brought by plaintiff as deceased's representative, death having abated the